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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,366	12/12/2006	Alfred Schuetz	037051.57538US	2129

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EXAMINER

SRIVASTAVA, TARUN K

ART UNIT	PAPER NUMBER
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3732

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12/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/573,366	Applicant(s) SCHUETZ, ALFRED	
	Examiner TARUN K. SRIVASTAVA	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/24/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections 35 U.S.C. §112

1. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention..

2. **Claim 27 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.**

3. There is no specific description of what exactly a ‘turbulence body’ is, thus it is unclear how this device would be made.

4. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. **Claims 21 – 27 and 34 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

6. In claim 21, it is unclear if applicant is referring to the same reservoir as that disclosed in claim 20 or if he is claiming a new reservoir. For examination purposes, it is assumed that applicant is referring to a single reservoir.

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7. With respect to claim 34, it is unclear what applicant intends to claim from the word 'blockage' (especially because it is unclear from the drawings). It is being interpreted to mean the same as a diameter restriction such as that mentioned in claim 23, as this is most in accordance with the specification provided by applicant.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. **Claims 20 – 24, 26, 28, 30 – 31, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Vlock (4961698).**

10. Vlock shows a device for spraying water in an oral cavity including a main conduit (30, Fig. 1), water container (26), spray nozzle (28), and means (70, Fig. 2), for a continuous mixing of a treating agent (56). Vlock is directed to an ultrasonic tool, however, the water flow inherently functions as an oral douche. As to claim 21, the shown reservoir is located as claimed. Regarding claim 22, the oral douche is connected to the main conduit through a branch conduit (in figure 7, the branch conduit is from 136 to 138), and concerning claims 24 and 26, it is apparent from figure 7 that the branch conduit in this embodiment is parallel to the main conduit, and that the mixing reservoir (capsule halves 130 and 132) includes a central tubular body and is located in the branch stream.

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11. Regarding claim 28, Vlock further discloses a handpiece 10 with a grip body (the body of the device) which includes a tube connector (20; see column 3, lines 1 – 23) that is provided laterally (as required by claim 38, discussed below under the title 35 USC 103), a spray nozzle (28), a longitudinal channel forming a main conduit (30) between the two, and a chamber capable of being a mixing chamber (100) that forms a reservoir and is located in the grip body. As to claims 30 and 31, Vlock further discloses a removable cap 88 wherein webs are formed (the threads of cap 88) which extend radially and in an arc on an underside of the cap to cover what is capable of being a turbulence body (the reservoir 100, as above).

12. Regarding claims 23 and 34, Vlock shows a restriction 128 used to restrict diameter (the same purpose as required by claim 27) and teaches that it can extend fully (to serve the purpose of the blockage of claim 34).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. **Claims 25, 29, 32 – 33, 35 – 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vlock.**

16. Regarding claim 40, Vlock discloses a method for providing a treatment agent to a flow of water, with the steps of supplying a flow of water to a spray nozzle attached to a front end of a hand piece by a water supply tube connected to a rear end of the hand piece and providing a treatment agent to the flow of water by a mixing reservoir (inherent from figure 1).

17. Vlock adequately discloses the invention as claimed, as discussed above, but fails to teach: a mixing reservoir in the main part of a conduit (as required by claim 25), a longitudinal channel that extends under a floor of the mixing chamber (as required by claim 29), and a mixing chamber and tube connector on the rear end of a grip body (as required by claims 35 and 36). In addition, Vlock does not teach the use of a separate endpiece that is pushed onto the central tubular portion and contains the mixing chamber and tube connector (required by claim 36). Finally, since Vlock does not teach the separate endpiece of claim 36, he further does not disclose the main conduit (30) to be insertable into said endpiece.

18. With respect to the channel under a floor of a mixing chamber, a mixing reservoir in the main part of a conduit, and a mixing chamber and connector on the rear end of a grip body, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to modify Vlock's handpiece by changing the locations of the

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chamber and conduit, as it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

19. Regarding the separate end piece of claims 36 – 37, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make a separate endpiece for the reservoir and tube connector, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

20. **Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vlock in view of Chernack (4979503).**

21. Vlock adequately discloses the invention as claimed as discussed above, but fails to teach: a turbulence body through which the water is swirled around the substrate.

22. However, Chernack does disclose a turbulence body (turbine 44 in housing 42). Therefore, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to modify Vlock's handpiece by incorporating Chernack's turbulence body in order to better dissolve the medicating tablet.

Conclusion

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARUN K. SRIVASTAVA whose telephone number is (571)270-3769. The examiner can normally be reached on M - F 5:30 - 2:00 EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/John J Wilson/
Primary Examiner
Art Unit 3732**

Respectfully,
TKS
/T. K. S./
Examiner, Art Unit 3732
12/09/2008